HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

Description of the case

W.P. No. 778/2000/ S/S

Hem Chandra Chaunal

Vs

The state of Uttaranchal
& others

Approved for reporting.

~~**Not Approved for reporting**~~

Date of decision: 19.02.2007

Initial of Judge:

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HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 778 (SS) OF 2001

Hem Chandra Chaunal,
Ex-Constable (AP) No. 234,
Post-Chanfi, Police Station-Bhimtal,
District-Nainital.
Pin Code- 263 136. .....Petitioner.

Vs.

1. The State of Uttaranchal, through the Secretary (Home Police), Department, Uttaranchal Shasan, Dehradun.
2. The Inspector General of Police, Uttaranchal, through the Superintendent of Police, Pauri (Garhwal).
3. The Dy. Inspector General of Police, Pauri (Garhwal).
4. The Superintendent of Police, Pauri (Garhwal).
5. Sri Anand Singh Kathait Senior Sub-Inspector of Police, (Posted at Pauri Police Station on 13/06/99) through the Superintendent of Police, Pauri (Garhwal).
6. The Inspector General of Police, Meerut Range, Meerut, U.P. .....Respondents.

Dated: 19.2.2007

Sri Pankaj Miglani, Advocate for the petitioner.
Standing counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Pankaj Miglani, counsel for the petitioner and Standing Counsel for the respondents.

2. By the present writ petition, the petitioner has sought following relief:

> "(a) Issue an order, direction or writ in the nature of certiorari calling for records and quashing dismissal order dated 21/1/2000 (annexure III) as confirmed by Appellate Order (annexure II) dated 22/5/2000 Revision decision dated 25.7.2001 (Annexure SA-I) with supplementary affidavit dated 20.04.2001 and quashing all enquiry proceedings (Annexure V and annexure VI) based on incident of 13/6/1999 (annexure VIII & IX).
>
> (b) Issue an order, direction or writ in the nature of mandamus commanding respondents 1 to 4 to reinstate the petitioner in service with all benefits as are available to person on duty and pay arrears of salary with 15% (fifteen percent) interest thereon.
>
> (c) Issue an order, direction or writ in the nature of mandamus as interim measure to reinstate petitioner in service pending disposal of this writ petition on such terms and conditions as this Honourable High Court may deem fit in facts and circumstances of case.
>
> (d) To issue any other/and/or further orders to do complete justice in the cause, as deemed fit."

3. Briefly stated, petitioner was employed as armed Police Constable No. 234 in the office of Superintendent of Police, Puari (Garhwal) from 13.07.1980. The petitioner was dismissed from service on 21.01.2000 on the allegation of consuming alcohol while on duty on 13.06.1999.

4. Against the aforesaid order, the petitioner filed a departmental appeal before the Dy. Inspector General of Police, which was dismissed on 25.05.2000 and the order aforesaid was confirmed.

5. Thereafter, petitioner filed a Revision Application before the Inspector General of Police. Meerut Range, Meerut on 23rd June, 2000. The said revision was also dismissed on 25.07.2001 vide letter NO. 6k/56014/2001 by Sri Alok B. Lal-Inspector General of Police, Karmik, Headquarters, Police Headquarters, Uttaranchal, Dehradun.

6. The submission of the petitioner is that on 13.06.1999, the petitioner was given the duty of guard at the residence of Commissioner, Pauri for the period 8 p.m. to 10 p.m. In the evening, the petitioner felt stomach pain, however, he purchased medicine namely Pudin Hara for getting relief from stomach pain and consumed it around 7 p.m. According to the petitioner, physician had advised him to take it three hours before taking the lunch.

7. According to the petitioner, around 8.15 p.m. on 13.06.1999, Sri Rajendra Singh-personal servant came to the guardroom and made noise. Smt. Bahadi Devi, lady peon posted at Commissioner's residence pushed him inside the residence and he threatened to complain on phone to S.P./D.I.G. At about

8:45 p.m. Sri Anand Singh Kathait, Senior Sub Inspector, Police Station, Pauri along with other persons came for inspection of guard and found the petitioner on duty. He made an inspection note and went out, but again came and added to his note that petitioner be changed from guard duty. He prepared a memo addressed to Chief Medical Superintendent, District – Hospital, Pauri stating that the petitioner was found under intoxication.

8. Petitioner has further submitted that at the time, when he was posted at Almora, he had some altercations with Sri Kathait, therefore, in the rivalry he has done all this.

9. Further contention of the petitioner is that the Doctor has only submitted that the petitioner was found to have consumed alcohol, but he is not under the effect of alcoholic intoxication. Thereafter, a preliminary enquiry was conducted by Pratisar Nirikshak (Reserve Line Inspector) and according to the petitioner, relying on Doctor's opinion, he also gave the report against the petitioner.

10. Thereafter, petitioner was served with a formal charge sheet in proforma prescribed under Schedule 2 of U.P. Police Officers of Subordinate Rank (Punishment and Appeal) Rule, 1991 for proceeding under Police Act, 1861.

12. The grievance of the petitioner is that the enquiry officer did not apprise him of his right of taking help of defence assistance and didn't permit him to cross-examine witnesses, who were present and were examined by Enquiry Officer. Further in the enquiry, the Doctor was not examined as to on which basis he has given his opinion of '*found consumed alcohol*'.

13. On 03.11.1999, the petitioner was served with a show cause notice for penalty of dismissal. According to the petitioner on this date, the Superintendent of Police Pauri (Sri Vijay Bhatia) was neither empowered nor authorized to impose major penalties, therefore, he had to forward all papers to Dy. Inspector General of Police, Pauri, who was the punishing authority.

14. A second show cause notice was issued on 24.12.1999 proposing penalty of dismissal mentioning therein that on 03.11.1999 S.P. Pauri Garhwal was not authorized to impose penalties and now he had become authorized. This time again reasons for 'dismissal' instead of 'reduction in pay-scale' were not disclosed.

15. A counter affidavit has been filed by the State, where in paragraph –14, it has been stated that the petitioner is in the habit of consuming intoxicating items and has absented himself from the duty. It has also been submitted that the Dy. Inspector General of Police has power to dismiss the petitioner.

16. The punishment of the petitioner in the departmental inquiry is based on the medical examination report. Extract of medical examination report reads as under:

Smell of Alcohol

%76%	*CNS Pt. Conscious*	
and B.P. 130/90 Lungs & C- clear	*and oriented to time,*	
CV 5} N.D.A.	*place, and person*	
Abel}	*Pupil*	*BP/NCMR*
	Speech	*Slightly slurred*
	Gait	*Normal*

<u>Injuries:-</u>

No external injury detected at the time of examination.

Opinion

At the time of examination Haresh Chandra Chaymal has found consumed alcohol- but he is not under the effect of alcoholic intoxication.

17. The aforesaid medical examination report shows that the doctor has reached to the conclusion that the petitioner had consumed alcohol only on the basis of physical observation that his breath smelled of alcohol. His pupil and gait was normal and speech was slightly slurred.

18. The punishing authority and appellate authority has not considered the fact that observation by the doctor that smell of alcohol was coming out from the breath of petitioner was not a definite opinion that the petitioner had consumed alcohol. Smell of alcohol may come out from the breath a person who consumed alcoholic drugs.

19. The petitioner has come with a case in his defence that he had consumed Pudin Hara, an alcoholic drug on the advice of the doctor. He has filed prescription of the doctor and cash memo of Pudin Hara. Thus according to the petitioner he had consumed Pudin Hara, an Ayurvedic alcoholic medicine, which may smell his breadth and may slightly slur his speech. The physical observation cannot be sufficient to ascertain that a person had consumed liquor. To ascertain consumption of alcohol, blood test and urine test are necessary, which were not done in the present case.

20. The doctor has given definite opinion that the petitioner is not under the effect of alcoholic intoxication. Thus the medical examination report, which was relied upon in the departmental inquiry and was made basis for the punishment of the

petitioner, itself does not support the allegation against the petitioner. Thus I find that the findings arrived at by the disciplinary authority as well as by the appellate authority are illogical and is shocking to the conscience of the court. The medical evidence does not support the charge against the petitioner of being on duty under alcoholic intoxication and as such the punishment awarded to the petitioner is shockingly disproportionate.

21. In the case **Govt. of India & Anr. Vs. George Philip, 2007 AIR SCW 379** the Apex Court has held that power of High Court and Tribunal is limited for judicial review of the order passed by the disciplinary authority imposing punishment on employee but it has been observed that High Court can interfere under Article 226 of the Constitution of India, if it is found that there has been a substantial non-compliance of the rules of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravity of the charge.

The Apex Court has observed as under:

> *"It is trite that the Tribunal or the High Court exercising jurisdiction under Article 226 of the Constitution are not hearing an appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee. The jurisdiction exercised by the Tribunal or the High Court is a limited one and while exercising the power of judicial review, they cannot set aside the punishment altogether or impose some other penalty unless they find that there has been a substantial non-compliance of the rules of*

procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravamen of the charge."

22. In the present case the doctor who conducted medical examination of the petitioner has not been examined during the enquiry nor the petitioner has been given opportunity to cross examine the doctor and as such there has been a substantial non-compliance of the rules of procedure and a gross violation of rules of natural justice which has caused miscarriage of justice. The disciplinary authority as well as the appellate authority and the revisional authority has not considered this aspect of the case and as such the order of punishment passed against the petitioner is liable to be set aside.

23. In view of above, a writ of certiorari is issued quashing the dismissal order dated 21.1.2000, confirmed by the appellate order dated 22.5.2000 and order passed in revision on 25.7.2001. The petitioner is reinstated on his post with consequential service benefits.

Accordingly, writ petition is allowed. No order as to costs.

Dated: February 19, 2007 **Rajesh Tandon, J.**

*Dhyani